

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

VANCE S. ELLIOTT,

No. C 08-02352 SBA

Plaintiff,

and Related Cases:

v.

No. C 07-04446 SBA

No. C 06-04842 SBA

SAN FRANCISCO RESIDENTIAL
RENT STABILIZATION and
ARBITRATION BOARD,

ORDER

[Docket No. 26]

Defendant.

INTRODUCTION

Before the Court is defendant's Renewed Motion to Dismiss for Lack of Standing [Docket No. 26]. For the following reasons, plaintiff Vance S. Elliott has until seven days from the date of the entry of this Order to file an opposition to defendant's Renewed Motion to Dismiss for Lack of Standing [Docket No. 26] or the Court will *dismiss this matter with prejudice*.

BACKGROUND

I. Related Cases 06-04842, 07-04446, and 07-801666

On August 4, 2006, pro se plaintiff Vance E. Elliott filed suit against defendant San Francisco Residential Rent Stabilization and Arbitration Board (the "Board"). *See* Docket No. 1 in case C 06-04842 SBA ("4842"). He claimed the Board's Uniform Visitor Policy violated the Fourteenth Amendment by circumscribing visitors to single resident only (SRO) residences to between the hours of 9:00 a.m. and 9:00 p.m. Docket No. 6 in 4842 at 2. The Board answered on December 5, 2006. *See* Docket No. 10 in 4842. Elliott filed three more amended complaints. *See* Docket entries for 1/17/2007, 1/18/2007, 2/27/2007, all in 4842. On April 4, 2007, the Court ordered the parties to hold a settlement conference between January 9 and 18, 2008. *See* Docket No. 20 in 4842. On April 6, 2007, the Court referred this matter to Magistrate Judge Brazil for settlement purposes. *See* Docket entry for 4/6/07 in 4842.

On June 26, 2007, Elliott filed another complaint against the Board, in case MC-07-80166

1 (“80166”), which was assigned to Judge Vaughn R. Walker. *See* Docket No. 1 in 80166. Elliott
2 raised the same allegations in this complaint which he had raised in case 4842. *See id.* On
3 August 28, 2007, case 80166 was redesignated as case C-07-04446 MJJ (“4446”) and assigned to
4 Judge Martin J. Jenkins. *See* Docket No. 1 in 4446, Docket entry for 8/28/2007 in 80166. On
5 October 3, 2007, on the Board’s motion [Docket No. 25 in 4842], the Court related case 4842 to case
6 4446. *See* Docket No. 28 in 4842, Docket No. 8 in 4446. On November 29, 2007, the Board filed a
7 motion to dismiss for lack of standing, *see* Docket No. 35 in 4842, and a motion to consolidate, *see*
8 Docket No. 39 in 4842. On December 5, 2007, the Court set hearings for these motions for
9 February 26, 2008. *See* Docket No. 41 in 4842. On December 10, 2007, Elliott filed an amended
10 complaint in case 4446. *See* Docket entry for 12/10/2007 in 4446.

11 On January 18, 2008, Magistrate Judge Brazil set an OSC hearing for February 15, 2008,
12 regarding sanctions for Elliott’s failure to appear at a settlement conference. *See* Docket No. 42 in
13 4842. Elliott failed to appear at the OSC hearing, and on February 20, 2008, Magistrate Judge
14 Brazil issued a report and recommended the Court dismiss Elliott’s cases for failure to prosecute.
15 *See* Docket No. 46 in 4842.

16 As of February 26, 2008, Elliott had not filed any opposition to the Board’s motion to
17 dismiss. *See* Docket No. 47 in 4842. The Court thus vacated the hearing on the motion, and set an
18 OSC hearing regarding dismissal for failure to prosecute for March 13, 2008. *See id.* Both parties
19 appeared at the March 13, 2008 hearing. *See* Docket No. 49 in 4842. The Court consolidated cases
20 4842 and 4446. *See id.* Elliott said he failed to appear at his settlement conference because he
21 wanted a jury trial, and believed participating in the former would prevent the latter. *See* Docket
22 No. 50 in 4842. He also requested a chance to oppose the Board’s motion to dismiss. *See id.* The
23 Court set a briefing schedule, with his opposition due on March 26, 2008. *See id.* Elliott did not file
24 an opposition, and on April 1, 2008, the Court dismissed case 4842 without prejudice, for failure to
25 prosecute. *See id.* On June 4, 2008, the Court denied Elliott’s motion to reconsider under Federal
26 Rule of Civil Procedure 59. *See* Docket No. 52 in 4842.

27 **II. This Case, 08-02352 SBA**

28 On May 7, 2008, Elliott filed a complaint against the Board in this matter, alleging the

1 “Uniform Visitor Policy enforced upon the tenants of so-called SRO hotels in the SOMA and
2 Tenderlion [sic] districts of this City and County of San Francisco is in violation of the 14th
3 Amendment” Docket No. 1 (Compl.) at 2 ¶ 2. This same day, he also filed an application to
4 proceed *in forma pauperis*. See Docket No. 2. This matter was assigned to Magistrate Judge Chen,
5 who on June 16, 2008 granted Elliott *in forma pauperis* status. See Docket No. 5. On June 18,
6 2008, this Court related this matter to cases 4842 and 4446. See Docket No. 7.

7 On July 30, 2008, Elliott filed a Motion for Summary Judgment, captioned *only* for
8 case 4446. See Docket No. 25 in 4446. On August 4, 2008, defendant filed a Motion to Dismiss for
9 Lack of Jurisdiction [Docket No. 11]. On August 18, 2006, Elliott filed a Motion to Dismiss with
10 Leave to Amend [Docket No. 15]. Then, on August 22, 2008, he filed an Amendment to Motion to
11 Dismiss with Leave to Amend *only* in case 4842. See Docket No. 56 in 4842.

12 On September 3, 2009 the Court disposed of these pleadings. The Court denied Elliott’s
13 Motion for Summary Judgment, because it consisted of a four-page application to proceed *in forma*
14 *pauperis* and seven pages of largely illegible text, and because case 4446 was closed. See Docket
15 No. 17 at 6. The Court granted defendant’s Motion to Dismiss for Lack of Jurisdiction, filed on the
16 grounds that Elliott had failed to plead standing to sue. See *id.* The Court held that Elliott had failed
17 to plead *any* claim for relief in his complaint, thus failing to meet his burden to demonstrate
18 standing. See *id.* Nonetheless, because this defect was curable, the Court gave him 20 days leave to
19 amend. See *id.* at 6-7. The Court then denied as moot Elliott’s Motion to Dismiss with Leave to
20 Amend, as it was actually his opposition to defendant’s motion. See *id.* at 7. As for Elliot’s
21 Amendment to Motion to Dismiss with Leave to Amend, the Court admonished Elliot not to file
22 pleadings in his closed cases. See *id.* Finally, Elliott had declined to meet at defendant’s counsel’s
23 office, stating in a letter that she would use it the way a prostitute allegedly uses her brothel’s
24 surroundings to control her customers. See *id.* The Court ordered Elliott to prosecute his matter
25 with a decorum appropriate for litigation in the federal courts, or risk sanctions or dismissal. See *id.*
26 at 7-8.

27 On October 28, 2008, Elliott filed a First Amended Complaint. See Docket No. 19. On
28 November 18, 2008, defendant filed the Renewed Motion to Dismiss for Lack of Standing [Docket

No. 26] before this Court. The motion was set for hearing on February 24, 2009. Under Civil Local Rule 7-3(a), Elliott's opposition, if any was due on February 3, 2009. As of the date of this Order, Elliott has not filed any opposition. The Court's Standing Order for Civil Cases warns that "[t]he failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute a consent to the granting of the motion."

CONCLUSION

Accordingly, it is ORDERED that the hearing on defendant's Renewed Motion to Dismiss for Lack of Standing [Docket No. 26], set for February 24, 2009, at 1:00 p.m., in Courtroom 3 of the United States Courthouse, 1301 Clay Street, Oakland, California 94612, is VACATED. Plaintiff Vance S. Elliott has until seven days from the date of the entry of this Order on the docket to file an opposition to defendant's Renewed Motion to Dismiss for Lack of Standing. Defendant shall file any reply within ten days from the date of the entry of this Order on the docket. **If Elliott fails to file an opposition as required by this Order, the Court will dismiss this matter with prejudice for failure to prosecute and for failing to oppose defendant's motion. Elliott is warned that if this matter is dismissed with prejudice, he will not be able to file any pleadings related to any allegations giving rise to this matter, neither in this matter nor in any other matter.**

IT IS SO ORDERED.

February 17, 2009


Saundra Brown Armstrong
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ELLIOTT et al,

5 Plaintiff,

6 v.

7 SAN FRANCISCO RENT STABILIZATION
8 AND ARBITRATION B et al,

9 Defendant.

Case Number: CV08-02352 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
11 Court, Northern District of California.

12 That on February 18, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
15 located in the Clerk's office.

16 Vance S. Elliott
17 74 Sixth Street, #226
18 San Francisco, CA 94103-1608

19 Dated: February 18, 2009

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk